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Rosewood Care Center, Inc. of Joliet and United Food and Commercial Workers Local 1540, Chartered by the U.F.C.W. International Union, AFL-CIO. Case 13-CA-33324

June 26, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

Pursuant to a charge filed by the Union on April 12, 1995, the General Counsel of the National Labor Relations Board issued a complaint on May 2, 1995, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 13-RC-18836. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On May 30, 1995, the General Counsel filed a Motion for Summary Judgment. On May 31, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On June 14, 1995, the Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer and response to the Notice to Show Cause, the Respondent admits that the Union was certified as the exclusive bargaining representative of the unit employees, but attacks the validity of the certification on the basis of its objections to the election in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding.¹ We therefore find that the Respondent has

¹ Contrary to the Respondent's contention in its response to the Notice to Show Cause, the Board fully considered all of the issues raised in the Respondent's objections, including Objection II(1) and (2) which alleged threats by the Petitioner's agents and supporters.

not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.²

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times the Respondent, an Illinois corporation with an office and place of business in Joliet, Illinois, has been engaged in providing geriatric health care services. During the fiscal year preceding issuance of the complaint, the Respondent, in conducting its operations derived gross revenues in excess of \$100,000, and purchased and received at its Joliet, Illinois, facility goods valued in excess of \$5000 directly from points outside the State of Illinois.

The Respondent admits and we find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act,³ and that the Union is a labor organization within the meaning of Sec. 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held March 1, 1994, the Union was certified on December 14, 1994, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time dietary employees, kitchen employees, certified nurses aides, laundry employees, and housekeeping employees employed by the Employer at its facility now located at 3401 Hennepin Drive, Joliet, Illinois 60435; but excluding activities department employees, social service employees, marketing employees, medical records employees, care plan employees, Licensed Practical Nurses, Registered Nurses, office clerical employees, guards and supervisors as defined in the National Labor Relations Act.

The Regional Director recommended that Objection II(1) and (2) be overruled, and the Board in its decision adopted the Regional Director's findings and recommendation in that regard. See 315 NLRB 746 (1994).

² In the underlying case, Member Cohen concluded, contrary to the majority, that Respondent's Objection I should be sustained and that a second election should be held. Consistent with that view, Member Cohen would not have certified the Union and thus does not join in finding that the Respondent has violated Sec. 8(a)(5) and (1) of the Act.

³ On May 25, 1995, the Respondent stipulated that it is an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

About December 30, 1994, and February 6, 1995, the Union, by letter, requested the Respondent to bargain, and, since about December 30, 1994, the Respondent has refused.⁴ We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after December 30, 1994, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Rosewood Care Center, Inc. of Joliet, Jo-

⁴Although the Respondent's answer denies the allegation that since about December 30, 1994, the Respondent has refused to bargain with the Union as the exclusive bargaining representative of the unit, it admits the allegation that the Respondent is refusing to bargain to test the Board's certification of the Union. Further, nowhere in its answer or response to the Notice to Show Cause does the Respondent contend that it has offered to bargain with the Union as the exclusive bargaining representative since December 30, 1994. Accordingly, we find that the Respondent has refused to bargain with the Union as alleged.

liet, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Food and Commercial Workers Local 1540, Chartered by the U.F.C.W. International Union, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time dietary employees, kitchen employees, certified nurses aides, laundry employees, and housekeeping employees employed by the Employer at its facility now located at 3401 Hennepin Drive, Joliet, Illinois 60435; but excluding activities department employees, social service employees, marketing employees, medical records employees, care plan employees, Licensed Practical Nurses, Registered Nurses, office clerical employees, guards and supervisors as defined in the National Labor Relations Act.

(b) Post at its facility in Joliet, Illinois, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 13 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

⁵If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. June 26, 1995

William B. Gould IV, Chairman

Margaret A. Browning, Member

Charles I. Cohen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with United Food and Commercial Workers Local 1540, Chartered by the U.F.C.W. International Union, AFL-CIO as the exclusive representative of the employees in the bargaining unit

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time dietary employees, kitchen employees, certified nurses aides, laundry employees, and housekeeping employees employed by us at our facility now located at 3401 Hennepin Drive, Joliet, Illinois 60435; but excluding activities department employees, social service employees, marketing employees, medical records employees, care plan employees, Licensed Practical Nurses, Registered Nurses, office clerical employees, guards and supervisors as defined in the National Labor Relations Act.

ROSEWOOD CARE CENTER, INC. OF
JOLIET